

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARK NUNEZ et al.,	: 11 CV 5845 (LTS) (JCF)
	:
Plaintiffs,	: ASHAKI JONES' ANSWER
	: TO SECOND AMENDED
-against-	: COMPLAINT AND
	: CROSS CLAIMS
CITY OF NEW YORK, et al.,	:
	:
Defendants.	:
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Defendant Captain Ashaki Jones (“Captain Jones”), by her attorneys, as and for her answer to the second amended complaint and her cross-claims, respectfully alleges as follows, by like-numbered paragraph:

As to “Nature Of Action”

1. Deny each and every allegation, except admit that plaintiffs purport to bring this action as stated therein. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

2. Deny each and every allegation, except deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation concerning the lawsuits in question.

3. Deny each and every allegation, except deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation concerning the lawsuits in question.

4. Deny each and every allegation, except deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation concerning the “orders and agreements” in question.

5. Deny each and every allegation, except admit that plaintiffs purport to bring this action as stated therein. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

6. Deny each and every allegation, except admit that plaintiffs purport to bring this action and to seek relief as stated therein. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

As to “Jurisdiction”

7. Deny each and every allegation, except admit that plaintiffs purport to bring this action as stated therein and to invoke this Court’s jurisdiction as stated therein.

As to “Venue”

8. Deny each and every allegation, except admit that plaintiffs purport to base venue as stated therein.

As to “Parties”

9. Deny each and every allegation, except deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation concerning whether the named plaintiffs are or were inmates in the custody of the Department of Correction (“DOC”).

10. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except admit that plaintiffs purport to sue the named defendants in their individual capacities. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

11. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except admit that plaintiffs purport to sue the named

defendants in their individual capacities; that Captain Jones was and is a captain employed by the DOC; and that at all times Captain Jones acted properly and lawfully, and within the scope of her employment with the DOC. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

12. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except admit that plaintiffs purport to sue the named defendant in her individual capacity. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

13. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except admit that plaintiffs purport to sue the named defendant in his individual capacity. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

14. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except admit that plaintiffs purport to sue the named defendant in her individual capacity. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

15. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except admit that plaintiffs purport to sue the named defendant in his individual capacity. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

16. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except admit that plaintiffs purport to sue the named defendant

in his individual capacity. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

17. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except admit that plaintiffs purport to sue the named defendant in his individual capacity. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

18. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except admit that plaintiffs purport to sue the named defendant in his individual capacity. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

19. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except admit that plaintiffs purport to sue the named defendant in her individual capacity. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

20. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except admit that plaintiffs purport to sue the named defendant in her individual capacity. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

21. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except admit that plaintiffs purport to sue the named defendant in his individual capacity. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

22. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except admit that plaintiffs purport to sue the named defendant in her individual and official capacities. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

23. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except admit that plaintiffs purport to sue the named defendant in his individual and official capacities. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

24. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except admit that plaintiffs purport to sue the named defendant in his individual and official capacities. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

25. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except admit that plaintiffs purport to sue the named defendant in his individual and official capacities. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

26. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except admit that plaintiffs purport to sue the named defendant in his individual capacity. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

27. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except admit that plaintiffs purport to sue the named defendant

in her individual and official capacities. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

28. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except deny each and every allegation concerning the “Unconstitutional Use of Force Practice” and admit that the City of New York (“City”) is a municipal corporation that operates a number of detention jails. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

As to “Class Action Allegations”

29. Deny each and every allegation in paragraph 29 and all its subparts, except admit that the plaintiffs purport to bring this action as a class action as stated therein. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

As to “Factual Allegations”

30. Deny each and every allegation.

31. Deny each and every allegation.

32. Deny each and every allegation.

33. Deny each and every allegation.

34. Deny each and every allegation.

35. Deny each and every allegation.

36. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except deny each and every allegation insofar as such

allegations are directed or pertain to or could be construed as being directed or pertaining to Captain Jones.

37. Deny each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

38. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

39. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

40. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, and respectfully refer the Court to the reports and summaries in question for their full content and meaning.

41. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except deny the allegations concerning “the unlawful practices and policies challenged in this lawsuit, including the Unconstitutional Use of Force Practice”, and respectfully refer the Court to the reports in question for their full content and meaning.

42. Deny each and every allegation.

43. Deny each and every allegation, except deny having knowledge or information sufficient to form a belief as to the truth of the allegations concerning the “policy and practice” with regard to the reports in question and the contents of said reports, and respectfully refer the Court to said reports for their full content and meaning.

44. Deny each and every allegation.

45. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except deny the allegations concerning “the unlawful practices and policies challenged in this lawsuit, including the Unconstitutional Use of Force Practice”, and respectfully refer the Court to the letters in question for their full content and meaning.

46. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation in paragraph 46 and all its subparts.

47. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except deny the allegations concerning “the unconstitutional practices and policies [] challenged in this lawsuit, including the Unconstitutional Use of Force Practice”, and respectfully refer the Court to the settlement agreement in Ingles and the internal reports in question for their full content and meaning. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

48. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation in paragraph “48” and all its subparts, except deny the allegations concerning “the unconstitutional practices and policies challenged in this lawsuit, including the Unconstitutional Use of Force Practice”.

49. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except deny the allegations concerning “the unlawful practices and policies challenged in this lawsuit, including the Unconstitutional Use of Force Practice”. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

50. Deny having knowledge or information sufficient to form a belief as to the

truth of each and every allegation in paragraph 50 and all its subparts, except deny the allegations concerning “the unlawful practices and policies challenged in this lawsuit, including the Unconstitutional Use of Force Practice”.

51. Deny each and every allegation.

52. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except deny the allegations concerning “the pattern of unnecessary and excessive force”, and respectfully refer the Court to DOC Directive 5003 and the Ingles settlement for their full content and meaning.

53. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

54. Deny each and every allegation.

55. Deny each and every allegation.

56. Deny each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

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58. Deny each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

59. Deny each and every allegation.

60. Deny each and every allegation.

61. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

62. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

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129. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

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135. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

136. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

137. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

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140. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

141. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

142. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

143. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

144. Deny having knowledge or information sufficient to form a belief as to the

truth of each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

145. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except deny the allegation that “DOC staff assaulted him” and admit that on or about February 28, 2011, plaintiff Clifford Sewell (“Sewell”) was detained at the Robert N. Davoren Center.

146. Deny each and every allegation.

147. Deny each and every allegation.

148. Deny each and every allegation.

149. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

150. Deny each and every allegation.

151. Deny each and every allegation.

152. Deny each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

153. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

154. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

155. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

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157. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

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160. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

161. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

162. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

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164. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

165. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

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167. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

168. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

169. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

170. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation.

171. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

172. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except admit that plaintiffs' claims have not been settled.

As to "Claims for Relief"

173. Repeat and reallege each and every allegation, admission, and denial made in response to paragraphs 1-172 of the second amended complaint. As to the allegations in paragraph 173, deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation, except deny each and every allegation insofar as such allegations are directed or pertain to or could be construed as being directed or pertaining to Captain Jones. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

174. Deny having knowledge or information sufficient to form a belief as to the

truth of each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

175. Deny each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

176. Deny each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

177. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

178. Deny each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

179. Deny each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

180. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

181. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

182. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

183. Deny each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

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190. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

191. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation. Insofar as the allegations purport to state questions or

conclusions of law, such matters of law are respectfully referred to the Court.

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193. Deny each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

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198. Deny each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

199. Deny each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

200. Deny having knowledge or information sufficient to form a belief as to the

truth of each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

201. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

202. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

203. Deny each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

204. Deny each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

205. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

206. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

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211. Deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation. Insofar as the allegations purport to state questions or conclusions of law, such matters of law are respectfully referred to the Court.

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As to “Prayer for Relief”

230. No response is required to the allegations in paragraph “230”.

231. Deny each and every allegation except admit that plaintiffs purport to seek relief as stated therein.

232. Deny each and every allegation except admit that plaintiffs purport to seek relief as stated therein.

233. Deny each and every allegation except admit that plaintiffs purport to seek relief as stated therein.

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AFFIRMATIVE DEFENSES

A. The second amended complaint fails to state a cause of action against Captain Jones upon which relief may be granted.

B. Captain Jones has not violated any inmate's rights, privileges, or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has she violated any act of Congress providing for the protection of civil rights.

C. Any injury alleged to have been sustained by Sewell was caused, in whole or in part, by his own culpable, intentional, or negligent conduct and/or the intervening conduct of a third-party or third-parties, and was not the proximate result of any act or omission by Captain Jones.

D. To the extent Sewell has suffered any damages, such damages were proximately caused in whole or in part by Sewell's culpable, intentional and/or negligent conduct and/or the intervening conduct of a third party or third parties, and his recovery, if any, shall be barred or diminished accordingly.

E. At all relevant times, Captain Jones acted reasonably, properly, lawfully, and in good faith.

F. At all relevant times, Captain Jones acted within the scope of her employment with the DOC.

G. All or part of the allegations asserted against Captain Jones concern discretionary governmental decisions or functions for which she is immune from liability.

H. The doctrine of immunity, whether qualified, sovereign, statutory or

otherwise, renders Captain Jones immune with regard to each and every claim asserted against her.

I. Plaintiff Sewell failed to mitigate his damages.

J. There is no factual basis for requesting the imposition of punitive damages against Captain Jones.

K. The claim for punitive damages violates the Constitution of the United States and the Constitution of the State of New York and various statutory proscriptions thereof.

L. Captain Jones was not deliberately indifferent to the serious medical needs of any inmate.

M. Plaintiffs' claims may be barred in whole or in part by the applicable statutes of limitations.

N. Plaintiffs' claims may be barred by plaintiffs' failure to comply with the conditions precedent to suit.

O. Plaintiffs' claims may be barred or limited by the Prison Litigation Reform Act.

CROSS-CLAIMS

FIRST CROSS-CLAIM

1. If plaintiffs were caused to sustain damages as alleged in the second amended complaint due to any carelessness, recklessness, negligence, and/or acts of omission or commission other than plaintiffs' own carelessness, recklessness, negligence, and/or acts of omission or commission, said damages were sustained by reason of the carelessness, recklessness, negligence, and/or acts of omission or commission of each and every one of the

other named defendants in this case and their respective agents, servants, and/or employees (collectively referred to herein as “Co-defendants”); and if any judgment is recovered herein by the plaintiffs against Captain Jones, she will be damaged thereby and the Co-defendants will be responsible therefor in whole or in part.

2. By reason of the foregoing, the Co-defendants will be liable to Captain Jones and in the full amount of any recovery had herein by plaintiffs or for that proportion thereof caused by the relative responsibility of each of the Co-defendants herein, and the said Co-defendants will be bound to pay any and all fees and disbursements.

SECOND CROSS-CLAIM

3. Pursuant to New York General Municipal Law Section 50-k and any other applicable statute, legal authority, and rule, the City shall indemnify and save harmless Captain Jones in the amount of any judgment or settlement amount obtained against her because any alleged act or omission from which such judgment or settlement arose would have occurred while she was properly and lawfully acting within the scope of her public employment and in the discharge of her duties and she was not in violation of any rule or regulation of her agency at the time the alleged damages were sustained, and any such alleged damages were not caused by Captain Jones’ intentional wrongdoing or recklessness.

DEMAND FOR JUDGMENT

WHEREFORE, as to the second amended complaint and cross-claims, defendant Captain Ashaki Jones respectfully demands judgment against plaintiffs and, if necessary and applicable, the Co-Defendants, as follows:

- I. Dismissal of the second amended complaint and denial of all relief requested

therein with costs and disbursements in favor of Captain Jones.

II. Judgment in favor of Captain Jones on her cross-claims against Co-Defendants, only if necessary and applicable.

III. Such other, further, and different relief as this Court may deem just and proper.

Dated: New York, New York
March 31, 2013

Respectfully submitted,

LAW OFFICE OF
RICHARD E. SIGNORELLI

By: /s/ Richard E. Signorelli

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